

STATEMENT OF PURPOSE

RS22051

The Department of Defense has requested that states adopt legislation to consider the unique aspects of military service when balancing equities between parent and child in custody and visitation cases involving service members who must be separated from their families for an extended period of time during mobilizations, temporary duty, or deployment. Certain protections are already in federal law under the Servicemembers Civil Relief Act (2003), and this bill first requires that the court determine if the Act applies, in paragraph 1, and then act accordingly. Having this provision in the statute will also alert attorneys and parties to the existence of the Act.

The Department of Defense has a list of Best Practices which it believes States should enact to give additional protections to service members, especially when on deployment. While Idaho Code covers the provision of deployment not being a sole factor in custodial decisions in §32-717 (2008), the desired outcome for the best protections covers other provisions as Best Practices and include these substantive points:

1. No permanent orders altering existing custody arrangements should be entered while the custodial service member is unavailable due to military service. This bill provides that protection in 1(a) of the new statute by requiring that any modification while the service member is deployed can only be a temporary order during the deployment, expiring sixty (60) days after completion of deployment and notification to the court and all interested persons that the deployment has ended. At that point, normal custody methods would be in place, under the Act if it still applied. However, the bill also allows an expedited hearing if an interested person files a motion alleging that expiration of the order would not be in the best interests of the child, and the order will remain in effect until that hearing is held and the court issues its ruling, but the court will enter a temporary order granting reasonable contact to the deploying parent with the child, unless that is not in the best interests of the child.
2. The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. This is similarly covered under the provisions of 1(a).
3. A service member with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the service member's absence due to military service. This is covered by existing law through the parental delegation of authority provisions of §15-5-104 (1991) and therefore is not repeated in this bill.
4. States frequently include: (1) Allow expedited hearings upon the request of a service member. This is covered in 1(b). (2) Let the court use electronic testimony when the Service Member is unavailable, if it is in the best interest of the Service Member. This is covered in 1(c).

The bill also includes clear definitions in paragraph 2.

FISCAL NOTE

This bill will have no fiscal impact.

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